

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 135 of 1985

Hon'ble MR.JUSTICE Y.B.BHATT

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

HEIRS OF DECEASED NARANDAS T. PUSHPABEN NARANDAS

Versus

RAHUTUHISHA WIDOW OF ABDULHUSSEIN HAJI ABDULKADAR

Appearance:

MS VASUBEN P SHAH for Petitioners
NOTICE SERVED for Respondent No. 1, 5, 6, 7
MR KC SHAH for Respondent No. 4

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 25/02/2000

ORAL JUDGEMENT

1. This is a revision under section 29(2) of the Bombay Rent Act at the instance of the original tenants-defendants. The respondents being landlords had filed a suit under the provisions of the Bombay Rent act for a decree of eviction against their original tenant

(of whom the present petitioners are heirs) on the ground of arrears of rent of more than six months and also on the ground that the tenant had illegally sublet the premises in question. The trial court, after appreciating the evidence on record, had decreed the suit of the landlords on both the grounds. The petitioners, therefore, preferred an appeal under section 29 of the Bombay Rent Act, which was also dismissed. Hence the present revision.

2. It is pertinent to note that the lower appellate court upset the finding of the trial court so far as the question of subletting is concerned by holding that the landlord had failed to establish that the tenant had illegally sublet the property in question. The lower appellate court, however, confirmed the decree of the trial court for eviction on the ground that the tenant was arrears for more than six months prior to the date of the suit notice, and that the conditions stipulated by section 12(3)(a) of the Bombay Rent Act would apply to the facts of the case, and since the tenant had not paid the landlord or made the deposit in court within 30 days from the date of the statutory notice, a decree for eviction must follow.

3. It is required to be noted that so far as the ground of arrears of more than six months is concerned, there are concurrent findings of fact recorded by the two courts below.

4. Before proceeding with the merits of the matter it would be pertinent to bear in mind the principles laid down by the Supreme Court while dealing with the revisions arising under section 29(2) of the said Act. The Supreme Court in the case of Patel Valmik Himatlal & Others Vs. Patel Mohanlal Muljibhai [1998(2) GLH 736 = AIR 1998 SC 3325], while approving and reiterating the principles laid down in its earlier decision in the case of Helper Girdharbhai Vs. Saiyad Hohmad Mirasaheb Kadri [AIR 1987 SC 1782], held that High Court cannot function as a court of appeal, cannot reappreciate the evidence on record, cannot discard concurrent findings of fact based on evidence recorded by the courts below, and cannot interfere on grounds of inadequacy or insufficiency of evidence, and cannot interfere, except in cases where conclusions drawn by the courts below are on the basis of no evidence at all, or are perverse. A different interpretation on facts is also not possible merely because another view on the same set of facts may just be possible.

5. The lower appellate court, after appreciating the complete evidentiary material on record came to the conclusion that the landlord had served the tenant with the suit notice at Exh.23, which is dated 19th February 1979 and was received by the deceased Narandas Tijumal, original defendant on 20th February 1979. The said notice specifically mentions the period of arrears of rent, being 1st July 1977 to 31st January 1979 and quantifies this arrears at Rs.722/-. This statutory notice is in writing addressed to the deceased defendant, and was received by him on 20th February 1979 (as per Exh.25). It was, however, replied to by the defendant as late as 20th June 1979. In the construction of the notice the lower appellate court found that the notice is very specific and very precise, the demand is certain and in any case the defendant tenant has in his written statement admitted that the arrears are due from 1st July 1977 at the rate of Rs.38/- per month. It is also obvious from the statutory notice and is even otherwise obvious from the suit plaint and from the evidence on record that the plaintiffs have demanded in the suit notice only the arrears of rent, and have not demanded any taxes, monthly or annual, any service charges or education cess or any other annual tax. Obviously, therefore, the statutory notice demands only the rent and nothing but the rent, at the rate of Rs.38/- per month and as per the written statement of the defendant-tenant himself there is no dispute that the monthly rent was Rs.38/-. Under these circumstances there is no question of any liability or obligation of the tenant to pay any education cess whatsoever nor is there any demand from the landlord for such education cess. In fact there is neither any plea by the tenant nor any evidence to the effect that education cess is to be paid by him, or that it is an obligation cast upon him by the terms of the tenancy or otherwise, or that the payment of education cess is part of the rent. The lower appellate court has rightly negatived the contention of the tenant on this aspect by observing, on a finding of fact based on the evidence on record, that the landlord is entitled to recover education cess from the tenant (under specified circumstances), but this is a right conferred upon the landlord only under the provisions of the Gujarat Education Cess Act. However, on the facts of the case, in the absence of any agreement to the effect, the landlord has chosen not to exercise this right and not even to make a demand in respect thereof.

6. Once it is found that the tenant was in arrears for a period of more than six months on the date of statutory notice, and that he neglects to make payment

thereof within one month of the date of the said notice, decree of eviction must follow under the provisions of section 12(3)(a) of the said Act.

7. The lower appellate court found on the facts of the case that the defence of the tenant that he has not neglected to pay the rent, but was unable to do so on account of his illness and sickness, etc., is not substantiated by the evidence on record. The lower appellate court in this context found that although he has produced medical evidence to show that he was suffering from certain diseases, he was not incapacitated, that he was certainly moving around the house, and that he was also conducting his business with the assistance of his nephew Mitharam and his brother Udhamdas. Moreover, the tenant Narandas had chosen not to step into the witness box to give evidence nor did he apply to have his deposition recorded through a commissioner. Even his nephew Mitharam has not been examined and Lalchand has also not been examined.

8. I, therefore, see no reason to interfere with the findings of fact recorded by the two courts below. It could not possibly be suggested that these concurrent findings of fact are a perversity in law or are based on no evidence at all.

9. This revision is, therefore liable to be dismissed and is accordingly dismissed. Rule is discharged with no order as to costs. Ad interim relief stands vacated.
